

West's Annotated Code of West Virginia  
Chapter 48. Domestic Relations  
Article 9. Custody of Children

W. Va. Code, Ch. 48, Art. 9, Refs & Annos  
[Currentness](#)

W. Va. Code, Ch. 48, Art. 9, Refs & Annos, WV ST Ch. 48, Art. 9, Refs & Annos  
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West's Annotated Code of West Virginia

Chapter 48. Domestic Relations

Article 9. Custody of Children (Refs & Annos)

Part 1. Scope; Objectives; Parties and Parent Education Classes

W. Va. Code, § 48-9-101

§ 48-9-101. Scope of article; legislative findings and declarations

[Currentness](#)

(a) This article sets forth principles governing the allocation of custodial and decision-making responsibility for a minor child when the parents do not live together.

(b) The Legislature finds and declares that it is the public policy of this state to assure that the best interest of children is the court's primary concern in allocating custodial and decision-making responsibilities between parents who do not live together. In furtherance of this policy, the Legislature declares that a child's best interest will be served by assuring that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interest of their children, to educate parents on their rights and responsibilities and the effect their separation may have on children, to encourage mediation of disputes, and to encourage parents to share in the rights and responsibilities of rearing their children after the parents have separated or divorced.

#### **Credits**

[Acts 2001, c. 91, eff. Sept. 1, 2001.](#)

[Notes of Decisions \(489\)](#)

W. Va. Code, § 48-9-101, WV ST § 48-9-101

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West's Annotated Code of West Virginia

Chapter 48. Domestic Relations

Article 9. Custody of Children (Refs & Annos)

Part 1. Scope; Objectives; Parties and Parent Education Classes

W. Va. Code, § 48-9-102

§ 48-9-102. Objectives; best interests of the child

Currentness

(a) The primary objective of this article is to serve the child's best interests, by facilitating:

(1) Stability of the child;

(2) Parental planning and agreement about the child's custodial arrangements and upbringing;

(3) Continuity of existing parent-child attachments;

(4) Meaningful contact between a child and each parent;

(5) Caretaking relationships by adults who love the child, know how to provide for the child's needs, and who place a high priority on doing so;

(6) Security from exposure to physical or emotional harm; and

(7) Expeditious, predictable decision-making and avoidance of prolonged uncertainty respecting arrangements for the child's care and control.

(b) A secondary objective of article is to achieve fairness between the parents.

**Credits**

Acts 2001, c. 91, eff. Sept. 1, 2001.

Notes of Decisions (2)

W. Va. Code, § 48-9-102, WV ST § 48-9-102

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Article 9. Custody of Children (Refs & Annos)

Part 1. Scope; Objectives; Parties and Parent Education Classes

W. Va. Code, § 48-9-103

§ 48-9-103. Parties to an action under this article

Currentness

(a) Persons who have a right to be notified of and participate as a party in an action filed by another are:

(1) A legal parent of the child, as defined in section 1-232 of this chapter;

(2) An adult allocated custodial responsibility or decision-making responsibility under a parenting plan regarding the child that is then in effect; or

(3) Persons who were parties to a prior order establishing custody and visitation, or who, under a parenting plan, were allocated custodial responsibility or decision-making responsibility.

(b) In exceptional cases the court may, in its discretion, grant permission to intervene to other persons or public agencies whose participation in the proceedings under this article it determines is likely to serve the child's best interests. The court may place limitations on participation by the intervening party as the court determines to be appropriate. Such persons or public agencies do not have standing to initiate an action under this article.

**Credits**

Acts 2001, c. 91, eff. Sept. 1, 2001.

Notes of Decisions (20)

W. Va. Code, § 48-9-103, WV ST § 48-9-103

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Chapter 48. Domestic Relations

Article 9. Custody of Children (Refs & Annos)

Part 1. Scope; Objectives; Parties and Parent Education Classes

W. Va. Code, § 48-9-104

§ 48-9-104. Parent education classes

Currentness

(a) The family court shall, by order, and with the approval of the supreme court of appeals, designate an organization or agency to establish and operate education programs designed for parents who have filed an action for divorce, paternity, support, separate maintenance or other custody proceeding and who have minor children. The education programs shall be designed to instruct and educate parents about the effects of divorce and custody disputes on their children and to teach parents ways to help their children and minimize their trauma.

(b) The family court shall issue an order requiring parties to an action for divorce involving a minor child or children to attend parent education classes established pursuant to subsection (a) of this section unless the court determines that attendance is not appropriate or necessary based on the conduct or circumstances of the parties. The court may, by order, establish sanctions for failure to attend. The court may also order parties to an action involving paternity, separate maintenance or modification of a divorce decree to attend such classes.

(c) The family court may require that each person attending a parent education class pay a fee, not to exceed twenty-five dollars, to the clerk of the circuit court to defray the cost of materials and of hiring teachers: Provided, That where it is determined that a party is indigent and unable to pay for such classes, the court shall waive the payment of the fee for such party. The clerk of the circuit court shall, on or before the tenth day of each month, transmit all fees collected under this subsection to the state treasurer for deposit in the state treasury to the credit of special revenue fund to be known as the "parent education fund" which is hereby created. All moneys collected and received under this subsection and paid into the state treasury and credited to the parent education fund shall be used by the administrative office of the supreme court of appeals solely for reimbursing the provider of parent education classes for the costs of materials and of providing such classes. Such moneys shall not be treated by the auditor and treasurer as part of the general revenue of the state.

(d) The administrative office of the supreme court of appeals shall submit a report to the joint committee on government and finance summarizing the effectiveness of any program of parent education no later than two years from the initiation of the program.

**Credits**

Acts 2001, c. 91, eff. Sept. 1, 2001; Acts 2001, 5th Ex. Sess., c. 5, eff. Sept. 19, 2001.

W. Va. Code, § 48-9-104, WV ST § 48-9-104

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Part 2. Parenting Plans

W. Va. Code, § 48-9-201

§ 48-9-201. Parenting agreements

Currentness

(a) If the parents agree to one or more provisions of a parenting plan, the court shall so order, unless it makes specific findings that:

(1) The agreement is not knowing or voluntary; or

(2) The plan would be harmful to the child.

(b) The court, at its discretion and on any basis it deems sufficient, may conduct an evidentiary hearing to determine whether there is a factual basis for a finding under subdivision (1) or (2), subsection (a) of this section. When there is credible information that child abuse as defined by [section 49-1-3 of this code](#) or domestic violence as defined by section 27-202 of this code has occurred, a hearing is mandatory and if the court determines that abuse has occurred, appropriate protective measures shall be ordered.

(c) If an agreement, in whole or in part, is not accepted by the court under the standards set forth in subsection (a) of this section, the court shall allow the parents the opportunity to negotiate another agreement.

**Credits**

[Acts 2001, c. 91, eff. Sept. 1, 2001.](#)

W. Va. Code, § 48-9-201, WV ST § 48-9-201  
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W. Va. Code, § 48-9-202

§ 48-9-202. Court-ordered services

Currentness

(a)(1) The court shall inform the parents, or require them to be informed, about:

(A) How to prepare a parenting plan;

(B) The impact of family dissolution on children and how the needs of children facing family dissolution can best be addressed;

(C) The impact of domestic abuse on children and resources for addressing domestic abuse; and

(D) Mediation or other nonjudicial procedures designed to help them achieve an agreement.

(2) The court shall require the parents to attend parent education classes.

(3) If parents are unable to resolve issues and agree to a parenting plan, the court shall require mediation unless application of the procedural rules promulgated pursuant to the provisions of subsection (b) of this section indicates that mediation is inappropriate in the particular case.

(b) The supreme court of appeals shall make and promulgate rules that will provide for premediation screening procedures to determine whether domestic violence, child abuse or neglect, acts or threats of duress or coercion, substance abuse, mental illness or other such elements would adversely affect the safety of a party, the ability of a party to meaningfully participate in the mediation or the capacity of a party to freely and voluntarily consent to any proposed agreement reached as a result of the mediation. Such rules shall authorize a family court judge to consider alternatives to mediation which may aid the parties in establishing a parenting plan. Such rules shall not establish a per se bar to mediation if domestic violence, child abuse or neglect, acts or threats of duress or coercion, substance abuse, mental illness or other such elements exist, but may be the basis for the court, in its discretion, not to order services under subsection (a) of this section or not to require a parent to have face-to-face meetings with the other parent.

(c) A mediator shall not make a recommendation to the court and may not reveal information that either parent has disclosed during mediation under a reasonable expectation of confidentiality, except that a mediator may reveal to the court credible information that he or she has received concerning domestic violence or child abuse.

(d) Mediation services authorized under subsection (a) of this section shall be ordered at an hourly cost that is reasonable in light of the financial circumstances of each parent, assessed on a uniform sliding scale. Where one parent's ability to pay for such services is significantly greater than the other, the court may order that parent to pay some or all of the expenses of the other. State revenues shall not be used to defray the costs for the services of a mediator: Provided, That the supreme court of appeals may use a portion of its budget to pay administrative costs associated with establishing and operating mediation programs: Provided, however, That grants and gifts to the state that may be used to fund mediation are not to be considered as state revenues for purposes of this subsection.

(e) The supreme court of appeals shall establish standards for the qualification and training of mediators.

#### **Credits**

[Acts 2001, c. 91, eff. Sept. 1, 2001](#); [Acts 2001, 5th Ex. Sess., c. 5, eff. Sept. 19, 2001](#).

W. Va. Code, § 48-9-202, WV ST § 48-9-202

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W. Va. Code, § 48-9-203

§ 48-9-203. Proposed temporary parenting plan; temporary order; amendment; vacation of order

Currentness

(a) A parent seeking a temporary order relating to parenting shall file and serve a proposed temporary parenting plan by motion. The other parent, if contesting the proposed temporary parenting plan, shall file and serve a responsive proposed parenting plan. Either parent may move to have a proposed temporary parenting plan entered as part of a temporary order. The parents may enter an agreed temporary parenting plan at any time as part of a temporary order. The proposed temporary parenting plan may be supported by relevant evidence and shall be verified and shall state at a minimum the following:

(1) The name, address and length of residence with the person or persons with whom the child has lived for the preceding twelve months;

(2) The performance by each parent during the last twelve months of the parenting functions relating to the daily needs of the child;

(3) The parents' work and child-care schedules for the preceding twelve months;

(4) The parents' current work and child-care schedules; and

(5) Any of the circumstances set forth in section 9-209 that are likely to pose a serious risk to the child and that warrant limitation on the award to a parent of temporary residence or time with the child pending entry of a permanent parenting plan.

(b) At the hearing, the court shall enter a temporary parenting order incorporating a temporary parenting plan which includes:

(1) A schedule for the child's time with each parent when appropriate;

(2) Designation of a temporary residence for the child;

(3) Allocation of decision-making authority, if any. Absent allocation of decision-making authority consistent with section two hundred seven of this article, neither party shall make any decision for the child other than those relating to day-to-day or emergency care of the child, which shall be made by the party who is present with the child;

(4) Provisions for temporary support for the child; and

(5) Restraining orders, if applicable.

(c) A parent may make a motion for an order to show cause and the court may enter a temporary order, including a temporary parenting plan, upon a showing of necessity.

(d) A parent may move for amendment of a temporary parenting plan, and the court may order amendment to the temporary parenting plan, if the amendment conforms to the limitations of section 9-209 and is in the best interest of the child.

**Credits**

[Acts 2001, c. 91, eff. Sept. 1, 2001.](#)

W. Va. Code, § 48-9-203, WV ST § 48-9-203

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W. Va. Code, § 48-9-204

§ 48-9-204. Criteria for temporary parenting plan

Currentness

(a) After considering the proposed temporary parenting plan filed pursuant to section 9-203 and other relevant evidence presented, the court shall make a temporary parenting plan that is in the best interest of the child. In making this determination, the court shall give particular consideration to:

(1) Which parent has taken greater responsibility during the last twelve months for performing caretaking functions relating to the daily needs of the child; and

(2) Which parenting arrangements will cause the least disruption to the child's emotional stability while the action is pending.

(b) The court shall also consider the factors used to determine residential provisions in the permanent parenting plan.

(c) Upon credible evidence of one or more of the circumstances set forth in subsection 9-209(a), the court shall issue a temporary order limiting or denying access to the child as required by that section, in order to protect the child or the other party, pending adjudication of the underlying facts.

(d) Expedited procedures shall be instituted to facilitate the prompt issuance of a parenting plan.

**Credits**

Acts 2001, c. 91, eff. Sept. 1, 2001.

W. Va. Code, § 48-9-204, WV ST § 48-9-204  
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W. Va. Code, § 48-9-205

§ 48-9-205. Permanent parenting plan

Effective: June 11, 2010

[Currentness](#)

(a) A party seeking a judicial allocation of custodial responsibility or decision-making responsibility under this article shall file a proposed parenting plan with the court. Parties may file a joint plan. A proposed plan shall be verified and shall state, to the extent known or reasonably discoverable by the filing party or parties:

(1) The name, address and length of residence of any adults with whom the child has lived for one year or more, or in the case of a child less than one year old, any adults with whom the child has lived since the child's birth;

(2) The name and address of each of the child's parents and any other individuals with standing to participate in the action under section one hundred three of this article;

(3) A description of the allocation of care taking and other parenting responsibilities performed by each person named in subdivisions (1) and (2) of this subsection during the twenty-four months preceding the filing of an action under this article;

(4) A description of the work and child-care schedules of any person seeking an allocation of custodial responsibility, and any expected changes to these schedules in the near future;

(5) A description of the child's school and extracurricular activities;

(6) A description of any of the limiting factors as described in section two hundred nine of this article that are present, including any restraining orders against either parent to prevent domestic or family violence, by case number and jurisdiction;

(7) Required financial information; and

(8) A description of the known areas of agreement and disagreement with any other parenting plan submitted in the case.

The court shall maintain the confidentiality of any information required to be filed under this section when the person giving that information has a reasonable fear of domestic abuse and disclosure of the information would increase that fear.

(b) The court shall develop a process to identify cases in which there is credible information that child abuse or neglect, as defined in section three, article one, chapter forty-nine of this code, or domestic violence as defined in section two hundred two,

article twenty-seven of this chapter has occurred. The process shall include assistance for possible victims of domestic abuse in complying with subdivision (6), subsection (a) of this section, and referral to appropriate resources for safe shelter, counseling, safety planning, information regarding the potential impact of domestic abuse on children and information regarding civil and criminal remedies for domestic abuse. The process shall also include a system for ensuring that jointly submitted parenting plans that are filed in cases in which there is credible information that child abuse or domestic abuse has occurred receive the court review that is mandated by subsection (b), section two hundred one of this article.

(c) Upon motion of a party and after consideration of the evidence, the court shall order a parenting plan consistent with the provisions of sections two hundred six, two hundred seven, two hundred eight and two hundred nine of this article, containing:

(1) A provision for the child's living arrangements and each parent's custodial responsibility, which shall include either:

(A) A custodial schedule that designates in which parent's home each minor child will reside on given days of the year; or

(B) A formula or method for determining such a schedule in sufficient detail that, if necessary, the schedule can be enforced in subsequent proceedings by the court;

(2) An allocation of decision-making responsibility as to significant matters reasonably likely to arise with respect to the child;

(3) A provision consistent with section two hundred two of this article for resolution of disputes that arise under the plan, and remedies for violations of the plan; and

(4) A plan for the custody of the child should one or both of the parents as a member of the National Guard, a reserve component or an active duty component be mobilized, deployed or called to active duty.

(d) A parenting plan may, at the court's discretion, contain provisions that address matters that are expected to arise in the event of a party's relocation, or provide for future modifications in the parenting plan if specified contingencies occur.

#### **Credits**

[Acts 2001, c. 91, eff. Sept. 1, 2001](#); [Acts 2010, c. 21, eff. June 11, 2010](#).

W. Va. Code, § 48-9-205, WV ST § 48-9-205

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W. Va. Code, § 48-9-206

§ 48-9-206. Allocation of custodial responsibility

Currentness

(a) Unless otherwise resolved by agreement of the parents under section 9-201 or unless manifestly harmful to the child, the court shall allocate custodial responsibility so that the proportion of custodial time the child spends with each parent approximates the proportion of time each parent spent performing caretaking functions for the child prior to the parents' separation or, if the parents never lived together, before the filing of the action, except to the extent required under section 9-209 or necessary to achieve any of the following objectives:

- (1) To permit the child to have a relationship with each parent who has performed a reasonable share of parenting functions;
- (2) To accommodate the firm and reasonable preferences of a child who is fourteen years of age or older, and with regard to a child under fourteen years of age, but sufficiently matured that he or she can intelligently express a voluntary preference for one parent, to give that preference such weight as circumstances warrant;
- (3) To keep siblings together when the court finds that doing so is necessary to their welfare;
- (4) To protect the child's welfare when, under an otherwise appropriate allocation, the child would be harmed because of a gross disparity in the quality of the emotional attachments between each parent and the child or in each parent's demonstrated ability or availability to meet a child's needs;
- (5) To take into account any prior agreement of the parents that, under the circumstances as a whole including the reasonable expectations of the parents in the interest of the child, would be appropriate to consider;
- (6) To avoid an allocation of custodial responsibility that would be extremely impractical or that would interfere substantially with the child's need for stability in light of economic, physical or other circumstances, including the distance between the parents' residences, the cost and difficulty of transporting the child, the parents' and child's daily schedules, and the ability of the parents to cooperate in the arrangement;
- (7) To apply the principles set forth in 9-403(d) of this article if one parent relocates or proposes to relocate at a distance that will impair the ability of a parent to exercise the amount of custodial responsibility that would otherwise be ordered under this section; and
- (8) To consider the stage of a child's development.

(b) In determining the proportion of caretaking functions each parent previously performed for the child under subsection (a) of this section, the court shall not consider the divisions of functions arising from temporary arrangements after separation, whether those arrangements are consensual or by court order. The court may take into account information relating to the temporary arrangements in determining other issues under this section.

(c) If the court is unable to allocate custodial responsibility under subsection (a) of this section because the allocation under that subsection would be manifestly harmful to the child, or because there is no history of past performance of caretaking functions, as in the case of a newborn, or because the history does not establish a pattern of caretaking sufficiently dispositive of the issues of the case, the court shall allocate custodial responsibility based on the child's best interest, taking into account the factors in considerations that are set forth in this section and in section two hundred nine and 9-403(d) of this article and preserving to the extent possible this section's priority on the share of past caretaking functions each parent performed.

(d) In determining how to schedule the custodial time allocated to each parent, the court shall take account of the economic, physical and other practical circumstances such as those listed in subdivision (6), subsection (a) of this section.

#### **Credits**

[Acts 2001, c. 91, eff. Sept. 1, 2001.](#)

W. Va. Code, § 48-9-206, WV ST § 48-9-206

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W. Va. Code, § 48-9-207

§ 48-9-207. Allocation of significant decision-making responsibility

Currentness

(a) Unless otherwise resolved by agreement of the parents under section 9-201, the court shall allocate responsibility for making significant life decisions on behalf of the child, including the child's education and health care, to one parent or to two parents jointly, in accordance with the child's best interest, in light of:

- (1) The allocation of custodial responsibility under section 9-206 of this article;
- (2) The level of each parent's participation in past decision-making on behalf of the child;
- (3) The wishes of the parents;
- (4) The level of ability and cooperation the parents have demonstrated in decision-making on behalf of the child;
- (5) Prior agreements of the parties; and
- (6) The existence of any limiting factors, as set forth in section 9-209 of this article.

(b) If each of the child's legal parents has been exercising a reasonable share of parenting functions for the child, the court shall presume that an allocation of decision-making responsibility to both parents jointly is in the child's best interests. The presumption is overcome if there is a history of domestic abuse, or by a showing that joint allocation of decision-making responsibility is not in the child's best interest.

(c) Unless otherwise provided or agreed by the parents, each parent who is exercising custodial responsibility shall be given sole responsibility for day-to-day decisions for the child, while the child is in that parent's care and control, including emergency decisions affecting the health and safety of the child.

**Credits**

Acts 2001, c. 91, eff. Sept. 1, 2001.

W. Va. Code, § 48-9-207, WV ST § 48-9-207  
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W. Va. Code, § 48-9-208

§ 48-9-208. Criteria for parenting plan; dispute resolution

Currentness

(a) If provisions for resolving parental disputes are not ordered by the court pursuant to parenting agreement under section 9-201, the court shall order a method of resolving disputes that serves the child's best interest in light of:

(1) The parents' wishes and the stability of the child;

(2) Circumstances, including, but not limited to, financial circumstances, that may affect the parents ability to participate in a prescribed dispute resolution process; and

(3) The existence of any limiting factor, as set forth in section 9-209 of this article.

(b) The court may order a nonjudicial process of dispute resolution by designating with particularity the person or agency to conduct the process or the method for selecting such a person or agency. The disposition of a dispute through a nonjudicial method of dispute resolution that has been ordered by the court without prior parental agreement is subject to de novo judicial review. If the parents have agreed in a parenting plan or by agreement thereafter to a binding resolution of their dispute by nonjudicial means, a decision by such means is binding upon the parents and must be enforced by the court, unless it is shown to be contrary to the best interests of the child, beyond the scope of the parents' agreement, or the result of fraud, misconduct, corruption or other serious irregularity.

(c) This section is subject to the limitations imposed by section two hundred two of this article.

**Credits**

Acts 2001, c. 91, eff. Sept. 1, 2001.

W. Va. Code, § 48-9-208, WV ST § 48-9-208  
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W. Va. Code, § 48-9-209

§ 48-9-209. Parenting plan; limiting factors

Effective: June 5, 2008

[Currentness](#)

(a) If either of the parents so requests, or upon receipt of credible information thereof, the court shall determine whether a parent who would otherwise be allocated responsibility under a parenting plan:

- (1) Has abused, neglected or abandoned a child, as defined by state law;
- (2) Has sexually assaulted or sexually abused a child as those terms are defined in articles eight-b and eight-d, chapter sixty-one of this code;
- (3) Has committed domestic violence, as defined in section 27-202;
- (4) Has interfered persistently with the other parent's access to the child, except in the case of actions taken for the purpose of protecting the safety of the child or the interfering parent or another family member, pending adjudication of the facts underlying that belief; or
- (5) Has repeatedly made fraudulent reports of domestic violence or child abuse.

(b) If a parent is found to have engaged in any activity specified by subsection (a) of this section, the court shall impose limits that are reasonably calculated to protect the child or child's parent from harm. The limitations that the court shall consider include, but are not limited to:

- (1) An adjustment of the custodial responsibility of the parents, including but not limited to:
  - (A) Increased parenting time with the child to make up for any parenting time the other parent lost as a result of the proscribed activity;
  - (B) An additional allocation of parenting time in order to repair any adverse effect upon the relationship between the child and the other parent resulting from the proscribed activity; or
  - (C) The allocation of exclusive custodial responsibility to one of them;

- (2) Supervision of the custodial time between a parent and the child;
  - (3) Exchange of the child between parents through an intermediary, or in a protected setting;
  - (4) Restraints on the parent from communication with or proximity to the other parent or the child;
  - (5) A requirement that the parent abstain from possession or consumption of alcohol or nonprescribed drugs while exercising custodial responsibility and in the twenty-four hour period immediately preceding such exercise;
  - (6) Denial of overnight custodial responsibility;
  - (7) Restrictions on the presence of specific persons while the parent is with the child;
  - (8) A requirement that the parent post a bond to secure return of the child following a period in which the parent is exercising custodial responsibility or to secure other performance required by the court;
  - (9) A requirement that the parent complete a program of intervention for perpetrators of domestic violence, for drug or alcohol abuse, or a program designed to correct another factor; or
  - (10) Any other constraints or conditions that the court deems necessary to provide for the safety of the child, a child's parent or any person whose safety immediately affects the child's welfare.
- (c) If a parent is found to have engaged in any activity specified in subsection (a) of this section, the court may not allocate custodial responsibility or decision-making responsibility to that parent without making special written findings that the child and other parent can be adequately protected from harm by such limits as it may impose under subsection (b) of this section. The parent found to have engaged in the behavior specified in subsection (a) of this section has the burden of proving that an allocation of custodial responsibility or decision-making responsibility to that parent will not endanger the child or the other parent.
- (d) If the court determines, based on the investigation described in part three of this article or other evidence presented to it, that an accusation of child abuse or neglect, or domestic violence made during a child custody proceeding is false and the parent making the accusation knew it to be false at the time the accusation was made, the court may order reimbursement to be paid by the person making the accusations of costs resulting from defending against the accusations. Such reimbursement may not exceed the actual reasonable costs incurred by the accused party as a result of defending against the accusation and reasonable attorney's fees incurred.
- (e)(1) A parent who believes he or she is the subject of activities by the other parent described in subdivision (5) of subsection (a), may move the court pursuant to subdivision (4), subsection (b), section one, article seven, chapter forty-nine of this code for the Department of Health and Human Resources to disclose whether the other parent was the source of the allegation and, if so, whether the Department found the report to be:

(A) Substantiated;

(B) Unsubstantiated;

(C) Inconclusive; or

(D) Still under investigation.

(2) If the court grants a motion pursuant to this subsection, disclosure by the Department of Health and Human Resources shall be in camera. The court may disclose to the parties information received from the Department only if it has reason to believe a parent knowingly made a false report.

#### **Credits**

Acts 2001, c. 91, eff. Sept. 1, 2001; Acts 2008, c. 64, eff. June 5, 2008.

#### [Notes of Decisions \(2\)](#)

W. Va. Code, § 48-9-209, WV ST § 48-9-209

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W. Va. Code, § 48-9-301

§ 48-9-301. Court-ordered investigation

Currentness

(a) In its discretion, the court may order a written investigation and report to assist it in determining any issue relevant to proceedings under this article. The investigation and report may be made by the guardian ad litem, the staff of the court or other professional social service organization experienced in counseling children and families. The court shall specify the scope of the investigation or evaluation and the authority of the investigator.

(b) In preparing the report concerning a child, the investigator may consult any person who may have information about the child and the potential parenting or custodian arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if the child has reached the age of twelve, unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (c) of this section are fulfilled, the investigator's report may be received in evidence at the hearing.

(c) The investigator shall deliver the investigator's report to counsel and to any party not represented by counsel at least ten days prior to the hearing unless a shorter time is ordered by the court for good cause shown. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (b) of this section, and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing.

(d) Services and tests ordered under this section shall be ordered only if at no cost to the individuals involved, or at a cost that is reasonable in light of the available financial resources.

**Credits**

Acts 2001, c. 91, eff. Sept. 1, 2001.

Notes of Decisions (6)

W. Va. Code, § 48-9-301, WV ST § 48-9-301  
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W. Va. Code, § 48-9-301a

§ 48-9-301a. Child abuse allegations

Effective: June 5, 2008

[Currentness](#)

(a) If allegations of child abuse are made during a child custody proceeding and the court has concerns regarding the child's safety, the court may take any reasonable, temporary steps as the court, in its discretion, deems appropriate under the circumstances to protect the child's safety until an investigation can be completed. Nothing in this subsection shall affect the applicability of sections two and nine of article six-a, chapter forty-nine of this code.

(b) If allegations of child abuse are made during a child custody proceeding, the court may request that the local child protective service conduct an investigation of the allegations pursuant to article six-a, chapter forty-nine of this code. Upon completion of the investigation, the agency shall report its findings to the court.

**Credits**

[Acts 2008, c. 64, eff. June 5, 2008.](#)

W. Va. Code, § 48-9-301a, WV ST § 48-9-301a  
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W. Va. Code, § 48-9-302

§ 48-9-302. Appointment of guardian

Currentness

- (a) In its discretion, the court may appoint a guardian ad litem to represent the child's best interests. The court shall specify the terms of the appointment, including the guardian's role, duties and scope of authority.
- (b) In its discretion, the court may appoint a lawyer to represent the child, if the child is competent to direct the terms of the representation and court has a reasonable basis for finding that the appointment would be helpful in resolving the issues of the case. The court shall specify the terms of the appointment, including the lawyer's role, duties and scope of authority.
- (c) When substantial allegations of domestic abuse have been made, the court shall order an investigation under section 9-301 or make an appointment under subsection (a) or (b) of this section, unless the court is satisfied that the information necessary to evaluate the allegations will be adequately presented to the court without such order or appointment.
- (d) Subject to whatever restrictions the court may impose or that may be imposed by the attorney-client privilege or by subsection 9-202(d), the court may require the child or parent to provide information to an individual or agency appointed by the court under section 9-301 or subsection (a) or (b) of this section, and it may require any person having information about the child or parent to provide that information, even in the absence of consent by a parent or by the child, except if the information is otherwise protected by law.
- (e) The investigator who submits a report or evidence to the court that has been requested under section 9-301 and a guardian ad litem appointed under subsection (a) of this section who submits information or recommendations to the court are subject to cross-examination by the parties. A lawyer appointed under subsection (b) of this section may not be a witness in the proceedings, except as allowed under standards applicable in other civil proceedings.
- (f) Services and tests ordered under this section shall be ordered only if at no cost to the individuals involved, or at a cost that is reasonable in light of the available financial resources.

**Credits**

Acts 2001, c. 91, eff. Sept. 1, 2001.

Notes of Decisions (1)

W. Va. Code, § 48-9-302, WV ST § 48-9-302  
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W. Va. Code, § 48-9-303

§ 48-9-303. Interview of the child by the court

[Currentness](#)

The court, in its discretion, may interview the child in chambers or direct another person to interview the child, in order to obtain information relating to the issues of the case. The interview shall be conducted in accordance with [rule 16 of the rules of practice and procedure](#) for family law, as promulgated by the supreme court of appeals.

**Credits**

[Acts 2001, c. 91, eff. Sept. 1, 2001.](#)

W. Va. Code, § 48-9-303, WV ST § 48-9-303  
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West's Annotated Code of West Virginia  
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Part 4. Modification of Parenting Plan

W. Va. Code, § 48-9-401

§ 48-9-401. Modification upon showing of changed circumstances or harm

Currentness

(a) Except as provided in section 9-402 or 9-403, a court shall modify a parenting plan order if it finds, on the basis of facts that were not known or have arisen since the entry of the prior order and were not anticipated therein, that a substantial change has occurred in the circumstances of the child or of one or both parents and a modification is necessary to serve the best interests of the child.

(b) In exceptional circumstances, a court may modify a parenting plan if it finds that the plan is not working as contemplated and in some specific way is manifestly harmful to the child, even if a substantial change of circumstances has not occurred.

(c) Unless the parents have agreed otherwise, the following circumstances do not justify a significant modification of a parenting plan except where harm to the child is shown:

(1) Circumstances resulting in an involuntary loss of income, by loss of employment or otherwise, affecting the parent's economic status;

(2) A parent's remarriage or cohabitation; and

(3) Choice of reasonable caretaking arrangements for the child by a legal parent, including the child's placement in day care.

(d) For purposes of subsection (a) of this section, the occurrence or worsening of a limiting factor, as defined in subsection (a), section 9-209, after a parenting plan has been ordered by the court, constitutes a substantial change of circumstances and measures shall be ordered pursuant to section 9-209 to protect the child or the child's parent.

**Credits**

Acts 2001, c. 91, eff. Sept. 1, 2001.

Notes of Decisions (81)

W. Va. Code, § 48-9-401, WV ST § 48-9-401

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W. Va. Code, § 48-9-402

§ 48-9-402. Modification without showing of changed circumstances

Currentness

(a) The court shall modify a parenting plan in accordance with a parenting agreement, unless it finds that the agreement is not knowing and voluntary or that it would be harmful to the child.

(b) The court may modify any provisions of the parenting plan without the showing of change circumstances required by subsection 9-401(a) if the modification is in the child's best interests, and the modification:

(1) Reflects the de facto arrangements under which the child has been receiving care from the petitioner, without objection, in substantial deviation from the parenting plan, for the preceding six months before the petition for modification is filed, provided the arrangement is not the result of a parent's acquiescence resulting from the other parent's domestic abuse;

(2) Constitutes a minor modification in the plan; or

(3) Is necessary to accommodate the reasonable and firm preferences of a child who has attained the age of fourteen.

(c) Evidence of repeated filings of fraudulent reports of domestic violence or child abuse is admissible in a domestic relations action between the involved parties when the allocation of custodial responsibilities is in issue, and the fraudulent accusations may be a factor considered by the court in making the allocation of custodial responsibilities.

**Credits**

Acts 2001, c. 91, eff. Sept. 1, 2001.

Notes of Decisions (2)

W. Va. Code, § 48-9-402, WV ST § 48-9-402  
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Part 4. Modification of Parenting Plan

W. Va. Code, § 48-9-403

§ 48-9-403. Relocation of a parent

Currentness

(a) The relocation of a parent constitutes a substantial change in the circumstances under subsection 9-401(a) of the child only when it significantly impairs either parent's ability to exercise responsibilities that the parent has been exercising.

(b) Unless otherwise ordered by the court, a parent who has responsibility under a parenting plan who changes, or intends to change, residences for more than ninety days must give a minimum of sixty days' advance notice, or the most notice practicable under the circumstances, to any other parent with responsibility under the same parenting plan. Notice shall include:

- (1) The relocation date;
- (2) The address of the intended new residence;
- (3) The specific reasons for the proposed relocation;
- (4) A proposal for how custodial responsibility shall be modified, in light of the intended move; and
- (5) Information for the other parent as to how he or she may respond to the proposed relocation or modification of custodial responsibility.

Failure to comply with the notice requirements of this section without good cause may be a factor in the determination of whether the relocation is in good faith under subsection (d) of this section and is a basis for an award of reasonable expenses and reasonable attorney's fees to another parent that are attributable to such failure.

The supreme court of appeals shall make available through the offices of the circuit clerks and the secretary-clerks of the family courts a form notice that complies with the provisions of this subsection. The supreme court of appeals shall promulgate procedural rules that provide for an expedited hearing process to resolve issues arising from a relocation or proposed relocation.

(c) When changed circumstances are shown under subsection (a) of this section, the court shall, if practical, revise the parenting plan so as to both accommodate the relocation and maintain the same proportion of custodial responsibility being exercised by each of the parents. In making such revision, the court may consider the additional costs that a relocation imposes upon the respective parties for transportation and communication, and may equitably allocate such costs between the parties.

(d) When the relocation constituting changed circumstances under subsection (a) of this section renders it impractical to maintain the same proportion of custodial responsibility as that being exercised by each parent, the court shall modify the parenting plan in accordance with the child's best interests and in accordance with the following principles:

(1) A parent who has been exercising a significant majority of the custodial responsibility for the child should be allowed to relocate with the child so long as that parent shows that the relocation is in good faith for a legitimate purpose and to a location that is reasonable in light of the purpose. The percentage of custodial responsibility that constitutes a significant majority of custodial responsibility is seventy percent or more. A relocation is for a legitimate purpose if it is to be close to significant family or other support networks, for significant health reasons, to protect the safety of the child or another member of the child's household from significant risk of harm, to pursue a significant employment or educational opportunity or to be with one's spouse who is established, or who is pursuing a significant employment or educational opportunity, in another location. The relocating parent has the burden of proving of the legitimacy of any other purpose. A move with a legitimate purpose is reasonable unless its purpose is shown to be substantially achievable without moving or by moving to a location that is substantially less disruptive of the other parent's relationship to the child.

(2) If a relocation of the parent is in good faith for legitimate purpose and to a location that is reasonable in light of the purpose and if neither has been exercising a significant majority of custodial responsibility for the child, the court shall reallocate custodial responsibility based on the best interest of the child, taking into account all relevant factors including the effects of the relocation on the child.

(3) If a parent does not establish that the purpose for that parent's relocation is in good faith for a legitimate purpose into a location that is reasonable in light of the purpose, the court may modify the parenting plan in accordance with the child's best interests and the effects of the relocation on the child. Among the modifications the court may consider is a reallocation of primary custodial responsibility, effective if and when the relocation occurs, but such a reallocation shall not be ordered if the relocating parent demonstrates that the child's best interests would be served by the relocation.

(4) The court shall attempt to minimize impairment to a parent-child relationship caused by a parent's relocation through alternative arrangements for the exercise of custodial responsibility appropriate to the parents' resources and circumstances and the developmental level of the child.

(e) In determining the proportion of caretaking functions each parent previously performed for the child under the parenting plan before relocation, the court may not consider a division of functions arising from any arrangements made after a relocation but before a modification hearing on the issues related to relocation.

(f) In determining the effect of the relocation or proposed relocation on a child, any interviewing or questioning of the child shall be conducted in accordance with the provisions of [rule 17 of the rules of practice and procedure](#) for family law as promulgated by the supreme court of appeals.

#### **Credits**

[Acts 2001, c. 91, eff. Sept. 1, 2001](#); [Acts 2001, 5th Ex. Sess., c. 5, eff. Sept. 19, 2001](#).

#### [Notes of Decisions \(8\)](#)

W. Va. Code, § 48-9-403, WV ST § 48-9-403

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Part 4. Modification of Parenting Plan

W. Va. Code, § 48-9-404

§ 48-9-404. Modification of a parenting plan due to military service

Effective: July 9, 2009

[Currentness](#)

(a) If a military parent is required to be separated from a child due to military service, a court shall not enter a final order modifying the terms of an existing parenting plan until ninety days after the military parent is released from military service. A military parent's absence or relocation because of military service must not be the sole factor supporting a change in circumstance or grounds sufficient to support a permanent modification of an existing parenting plan.

(b) A parenting plan establishing the terms of custody or visitation in place at the time a military parent is called to military service may be temporarily modified to make reasonable accommodation for the parties because of the military parent's service.

(c) A temporary parenting plan pursuant to this section shall provide that the military parent has at least substantial custodial responsibility of the child during a period of leave granted to the military parent during their military service, unless the court determines that it is not in the best interest of the child. If a temporary parenting plan is not issued pursuant to this section, the nonmilitary custodial parent shall make the child or children reasonably available to the military parent when the military parent has leave to ensure that the military parent has reasonable custodial responsibility and is able to exercise custodial responsibility of the child or children.

(d) If there is no existing parenting plan or order establishing the terms of custody or visitation and it appears that military service is imminent, upon motion by either parent, the court shall expedite a temporary hearing to establish a temporary parenting plan to ensure the military parent has access to the child, to establish support, and provide other appropriate relief.

**Credits**

[Acts 2009, c. 72, eff. July 9, 2009.](#)

W. Va. Code, § 48-9-404, WV ST § 48-9-404  
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Part 5. Enforcement of Parenting Plans

W. Va. Code, § 48-9-501

§ 48-9-501. Enforcement of parenting plans

Currentness

(a) If, upon a parental complaint, the court finds a parent intentionally and without good cause violated a provision of the court-ordered parenting plan, it shall enforce the remedy specified in the plan or, if no remedies are specified or they are clearly inadequate, it shall find the plan has been violated and order an appropriate remedy, which may include:

(1) In the case of interference with the exercise of custodial responsibility for a child by the other parent, substitute time for that parent to make up for time missed with the child;

(2) In the case of missed time by a parent, costs in recognition of lost opportunities by the other parent, in child care costs and other reasonable expenses in connection with the missed time;

(3) A modification of the plan, if the requirements for a modification are met under section 9-209, section 9-401, 402 or 403 of this article, including an adjustment of the custodial responsibility of the parents or an allocation of exclusive custodial responsibility to one of them;

(4) An order that the parent who violated the plan obtain appropriate counseling;

(5) A civil penalty, in an amount of not more than one hundred dollars for a first offense, not more than five hundred dollars for a second offense, or not more than one thousand dollars for a third or subsequent offense, to be paid to the parent education fund as established under section 9-104;

(6) Court costs, reasonable attorney's fees and any other reasonable expenses in enforcing the plan; and

(7) Any other appropriate remedy.

(b) Except as provided in a jointly submitted plan that has been ordered by the court, obligations established in a parenting plan are independent obligations, and it is not a defense to an action under this section by one parent that the other parent failed to meet obligations under a parenting plan or child support order.

(c) An agreement between the parents to depart from the parenting plan can be a defense to a claim that the plan has been violated, even though the agreement was not made part of a court order, but only as to acts or omissions consistent with the agreement that occur before the agreement is disaffirmed by either parent.

**Credits**

[Acts 2001, c. 91, eff. Sept. 1, 2001.](#)

[Notes of Decisions \(18\)](#)

W. Va. Code, § 48-9-501, WV ST § 48-9-501

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Part 6. Miscellaneous Provisions

W. Va. Code, § 48-9-601

§ 48-9-601. Access to a child's records

Currentness

(a)(1) Each parent has full and equal access to a child's educational records absent a court order to the contrary. Neither parent may veto the access requested by the other parent. Educational records are academic, attendance and disciplinary records of public and private schools in all grades kindergarten through twelve and any form of alternative school. Educational records are any and all school records concerning the child that would otherwise be properly released to the primary custodial parent, including, but not limited to, report cards and progress reports, attendance records, disciplinary reports, results of the child's performance on standardized tests and statewide tests and information on the performance of the school that the child attends on standardized statewide tests; curriculum materials of the class or classes in which the child is enrolled; names of the appropriate school personnel to contact if problems arise with the child; information concerning the academic performance standards, proficiencies, or skills the child is expected to accomplish; school rules, attendance policies, dress codes and procedures for visiting the school; and information about any psychological testing the school does involving the child.

(2) In addition to the right to receive school records, the nonresidential parent has the right to participate as a member of a parent advisory committee or any other organization comprised of parents of children at the school that the child attends.

(3) The nonresidential parent or noncustodial parent has the right to question anything in the child's record that the parent feels is inaccurate or misleading or is an invasion of privacy and to receive a response from the school.

(4) Each parent has a right to arrange appointments for parent-teacher conferences absent a court order to the contrary. Neither parent can be compelled against their will to exercise this right by attending conferences jointly with the other parent.

(b)(1) Each parent has full and equal access to a child's medical records absent a court order to the contrary. Neither parent may veto the access requested by the other parent. If necessary, either parent is required to authorize medical providers to release to the other parent copies of any and all information concerning medical care provided to the child which would otherwise be properly released to either parent.

(2) If the child is in the actual physical custody of one parent, that parent is required to promptly inform the other parent of any illness of the child which requires medical attention.

(3) Each parent is required to consult with the other parent prior to any elective surgery being performed on the child, and in the event emergency medical procedures are undertaken for the child which require the parental consent of either parent, if time permits, the other parent shall be consulted, or if time does not permit such consultation, the other parent shall be promptly informed of the emergency medical procedures: Provided, That nothing contained herein alters or amends the law of this state

as it otherwise pertains to physicians or health care facilities obtaining parental consent prior to providing medical care or performing medical procedures.

(c) Each parent has full and equal access to a child's juvenile court records, process and pleadings, absent a court order to the contrary. Neither parent may veto any access requested by the other parent. Juvenile court records are limited to those records which are normally available to a parent of a child who is a subject of the juvenile justice system.

**Credits**

[Acts 2001, c. 91, eff. Sept. 1, 2001.](#)

W. Va. Code, § 48-9-601, WV ST § 48-9-601

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W. Va. Code, § 48-9-602

§ 48-9-602. Designation of custody for the purpose of other state and federal statutes

[Currentness](#)

Solely for the purposes of all other state and federal statutes which require a designation or determination of custody, a parenting plan shall designate the parent with whom the child is scheduled to reside the majority of the time as the custodian of the child. However, this designation shall not affect either parent's rights and responsibilities under a parenting plan. In the absence of such a designation, the parent with whom the child is scheduled to reside the majority of the time is deemed to be the custodian of the child for the purposes of such federal and state statutes.

**Credits**

[Acts 2001, c. 91, eff. Sept. 1, 2001.](#)

[Notes of Decisions \(1\)](#)

W. Va. Code, § 48-9-602, WV ST § 48-9-602  
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W. Va. Code, § 48-9-603

§ 48-9-603. Effect of enactment; operative dates

Currentness

- (a) The enactment of this article, formerly enacted as article eleven of this chapter during the second extraordinary session of the Legislature, one thousand nine hundred ninety-nine, is prospective in operation unless otherwise expressly indicated.
- (b) The provisions of section 9-202, insofar as they provide for parent education and mediation, became operative on the first day of January, two thousand. Until that date, parent education and mediation with regard to custody issues were discretionary unless made mandatory under a particular program or pilot project by rule or direction of the supreme court of appeals or a circuit court.
- (c) The provisions of this article that authorize the court, in the absence of an agreement of the parents, to order an allocation of custodial responsibility and an allocation of significant decision-making responsibility became operative on the first day of January, two thousand, at which time the primary caretaker doctrine was replaced with a system that allocates custodial and decision-making responsibility to the parents in accordance with this article. Any order entered prior to the first day of January, two thousand, based on the primary caretaker doctrine remains in full force and effect until modified by a court of competent jurisdiction.

**Credits**

Acts 2001, c. 91, eff. Sept. 1, 2001; Acts 2001, 5th Ex. Sess., c. 5, eff. Sept. 19, 2001.

W. Va. Code, § 48-9-603, WV ST § 48-9-603  
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W. Va. Code, § 48-9-604

§ 48-9-604. Parent education and mediation fund

[Currentness](#)

There is hereby created in the state treasury a special revenue account, designated the “parent education and mediation fund”. The moneys of the fund shall be expended by the administrator of the supreme court of appeals for parent education and mediation programs.

**Credits**

[Acts 2001, c. 93, eff. April 14, 2001.](#)

W. Va. Code, § 48-9-604, WV ST § 48-9-604  
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